

**FIRST AMENDMENT
TO
MASTER SERVICES AGREEMENT**

This **FIRST AMENDMENT** is effective as of the last date it is signed by the parties and amends, supplements and clarifies the Master Services Agreement initiated on October 18, 2017 ("Agreement"), by and between Gaston County, North Carolina ("Customer") and Kimble's Commissary Service. ("Kimble's").

WHEREAS, Customer desires and Kimble's agrees to provide additional services as related to the commissary process and related equipment and solutions.

NOW, THEREFORE, as of the First Amendment Effective Date and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **TERM:** All prior references to 'Term' in subsequent documents related to this Master Services Agreement shall be superseded by the following: The "Term" of this Agreement shall commence upon the signing of this First Amendment and will continue for thirty six (36) months thereafter. Notwithstanding anything to the contrary, the terms and conditions of this Agreement shall continue to apply for so long as Kimble's continues to provide services hereunder to Customer after the expiration or termination of this Agreement.
2. **ADDITIONAL SERVICES:** The Gaston County Sheriff wishes to add inmate legal library services through the existing inmate dormitory kiosks installed at the Detention Facility. These services will be provided through a partnership between Kimble's Commissary Services and Fastcase, 711 D Street, NW Suite 200 Washington, DC 20004. Gaston County agrees to a yearly fee of \$4,500.00 for these services. The County agrees to have the yearly cost of the services deducted from their monthly commission rebate paid by Kimble's on commissary sales in the amount of \$375.00 each month.
3. **COMMISSION INCREASE:** Kimble's will increase the Customer's commission paid on commissary sells from 35% to 38%

All terms and conditions of the Agreement not amended by this First Amendment remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the First Amendment Effective Date by their duly authorized representatives.

GASTON COUNTY, NORTH CAROLINA

KIMBLE'S COMMISSARY SERVICES

By:



By:



Name:

Alan Cloninger

Name:

LEE FARNSWORTH

Title:

Sheriff

Title:

REGIONAL MANAGER

Date:

1-16-19

Date:

12-10-18

Please return signed amendment to:

Lee Farnsworth, Regional Manager - 23009 McDonald Point Rd., Seneca, SC 29672

2014-343-3

ADDITIONAL GASTON COUNTY CONTRACT TERMS/CONDITIONS AND SIGNATURE PAGE

NON APPROPRIATION

In the event funds are not appropriated during the term of this Agreement for the subject matter herein described, and there are no other available funds by or with which payment can be made to the Vendor, this agreement is terminated. This Agreement will be deemed terminated on the last day of the fiscal period for which appropriations were received without penalty or expense, except to the portion of payment for which funds have been appropriated and budgeted.

IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. Chapter 147, Article 6E

As of the date listed below, the vendor or bidder listed below is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. the applicable provisions within Chapter 147, Article 6E of the N.C.G.S. The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed below to make the foregoing statement.

NOTE: N.C.G.S Chapter 147, Article 6E requires this certification for bids or contracts with the various governmental entities of North Carolina, including Counties. The certification is required when a bid is submitted, when a contract is entered into, and when a contract is renewed or assigned. No vendor may utilize any subcontractor found on the State Treasurer's Final Divestment List. The List is updated every 180 days, and can be found at www.nctreasurer.com/iran

NORTH CAROLINA E-VERIFY CERTIFICATION

APPLICABILITY: Pursuant to North Carolina Sessions Law 2015-294, the certification is applicable for all contracts entered into by Gaston County, except contracts solely for the purchase of goods, apparatus, supplies, materials, equipment, or contracts with specific other entities as described in N.C.G.S. §143-133.3, piggy-back contracts, and travel purchases.

CERTIFICATION: By signing and entering into this contract with Gaston County, I hereby certify that I comply with E-Verify, the aforementioned Federal program used to verify the work authorization of newly hired employees working in North Carolina. I certify compliance with the E-Verification program pursuant to Article 2 of Chapter 64 of the North Carolina General Statutes. If applicable, I am also certifying that any subcontractor hired or used by me will comply with E-Verify, as described herein.

ADA AND CIVIL RIGHTS CERTIFICATION OF COMPLIANCE

I hereby certify that I comply with all applicable federal civil rights laws, including the applicable provisions of the Americans with Disabilities Act

NOTE ON UNIFORM GUIDANCE ("UG") REQUIRED CONTRACT PROVISIONS. Uniform Guidance ("UG") is a set of uniform standards for contracts involving the award/expenditure of certain federal monies. If the UG requirements are not applicable, the UG provisions do not apply, unless specifically stated so in the contract.

NOTE: BY SIGNING THE GASTON COUNTY SIGNATURE PAGE, YOU AGREE TO FOLLOW THE ATTACHED TERMS AND CONDITIONS, TO THE EXTENT THAT SUCH PROVISIONS ARE APPLICABLE.

VENDOR

Vendor Name: KIMBLE'S COMMISSARY SERVICES
By: [Signature] Title: REGIONAL MGR
Date: JANUARY 16, 2019

GASTON COUNTY

By: [Signature] H. PHELPS
County Manager/Assistant County Manager - Interim

Date: 2/7/19

ATTEST:

[Signature] 2/11/19
Clerk to the Board/Deputy Clerk to the Board

APPROVED AS TO FORM:

[Signature]
County Attorney/Assistant County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget Act.

[Signature]
Interim Finance Director/Financial Quality Assurance Manager

Uniform Guidance ("UG") Required Contract Provisions

APPLICABILITY: *UG is a set of uniform standards for award and expenditure of federal financial assistance, and applies to the purchase of apparatus, supplies, equipment, materials, services, construction and repair, and engineering/architectural services. See 2 CFR Part 200. Provided that these standards are applicable to you, by signing this signature page, you are certifying that your organization meets these requirements and that this certification, with the statutory references incorporated into each certification, on its face constitutes the "provision for compliance" for any paragraphs requiring such provision or other similar required statement, terms, or requirements. Gaston County is also required to be bound by such provisions. As the UG requires that any more stringent state law or local ordinance/policy supersedes these certifications, such state or local contractual references supersedes the requirements below, to the extent that the state or local provisions are more stringent than the federal requirements. If the service provided under the contract is not covered by the UG, signing the contract signature page will not bind the parties to these requirements, unless if specified in the contract. See generally https://www.ecfr.gov/cgi-bin/text-idx?SID=04e61f4e0a8317140a9ec150bb2ac195&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.i*

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Ex. Order 11375, "Amending Ex. Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3145-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of

\$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Ex. Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Ex. Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Ex. Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

§200.322 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

Commissary Service Agreement
Kimble's Commissary Services/Gaston County N.C.

This Commissary Service Agreement ("Agreement") is by and between the Gaston County NC ("Customer") and Kimble's Food By Design ("Kimble's").

Customer desires and Kimble's agrees to continue to provide certain Commissary Services to the inmates housed in the Gaston County Jail ("Facility") and to provide the software and equipment necessary to render such services.

Now therefore, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Scope of Services.

(a) Customer grants Kimble's the sole and exclusive right to:

(i) sell products and services to inmates of the Facility including but not limited to personal care items, beauty products, toiletries, clothing, food, email access, and related products. Customer shall not allow any party other than Kimble's (excluding inmate telephone services) to sell any product or service to inmates of the Facility. All products and services sold to inmates will be listed on a menu agreed upon by Customer and Kimble's. The prices of these products and services will be reviewed at least annually and agreed upon by Customer and Kimble's. Both parties agree that fluctuation in market prices may require price adjustments on individual products or services at intervals more frequently than once each year. Kimble's shall be responsible for payment of all applicable taxes on products or services purchased by inmates. The pricing on menus presented to inmates to purchase goods and services shall include all applicable taxes.

(ii) sell products on Kimble's website for purchase by friends and family of inmates which will be delivered to a designated inmate ("Care Pack Services Program"). Customer shall not contract with any party other than Kimble's to sell any product or service to the friends and family of inmates of the Facility. All products sold through the Care Pack Services program will be listed on a menu agreed upon by Customer and Kimble's. The prices of these products will be reviewed at least annually and agreed upon by Customer and Kimble's. Both parties agree that fluctuation in market prices may require price adjustments on individual products at intervals more frequently than once each year. Kimble's shall be responsible for payment of all applicable taxes on products or services purchased through the Care Pack Services Program. The pricing reflected on the Care Pack Services Program menu shall include all applicable taxes.

(iii) accept and maintain deposits into inmate trust accounts via web, lobby kiosk, or any other type of deposit service instituted by Kimble's. Customer will not permit, allow or accept deposits into inmate trust accounts through any party other than Kimble's.

(iv) install and maintain the software and equipment necessary to sell commissary products and services to inmates of the Facility. Customer may not resell any of the software or equipment including any of the applications related thereto or provide access to such applications directly or indirectly to third parties. Customer shall not use any of Kimble's software, equipment or related applications to facilitate the sale of any product or service to inmates except as approved by Kimble's.

(v) install and operate two or more financial kiosks designed for the purpose of funding inmate accounts. Customer shall not allow any party other than Kimble's to install or maintain a financial kiosk at the Facility except ATM's provided by a financial institution and designed to exchange cash for credit/debit card usage.

(b) In order to provide the services specified herein, Kimble's agrees to provide Customer:

(i) Access to and use of "Lockdown" jail inmate financial management software.

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(ii) Inmate Release Debit Cards. No fees will be charged on any debit card issued to a released inmate if the debit card balance is used or otherwise withdrawn by the inmate within two (2) days of release (Kimble's cannot control transaction fees charged by merchants such as ATM fees).

(iii) Equipment to write checks to inmates for the balance held in the inmate's trust account.

(iv) One Jail ATM Lobby Kiosk capable of accepting cash, credit and debit cards. Kimble's will collect a \$3.00 transaction fee for cash transactions and a 10% deposit transaction fee with a \$3.25 minimum for each credit/debit card transaction. Kimble's will insure that all fees charged are in compliance with all Federal and State laws.

(v) Two Booking Manager Kiosk capable of taking bills and coins from arrestees and immediately place collected funds in the arrestees trust fund account. (no user fees will be charged).

(vi) A portal for Web Deposits at www.jailatm.com. Kimble's will collect a 10% deposit transaction fee with a \$3.25 minimum for each transaction. Kimble's will insure that all fees charged are in compliance with all Federal and State laws.

(vii) Patent-Pending Swipe at Booking Technology allowing inmates to add funds to their commissary account using their credit/debit card accounts. Kimble's will collect a 10% deposit transaction fee with a \$3.25 minimum for each transaction. Kimble's will insure that all fees charged are in compliance with all Federal and State laws.

(viii) provide sixteen (16) dormitory kiosks use by inmates to order commissary, check account balances, send and receive electronic email, access information such as inmate handbooks, electronic messaging for such activities as visitation scheduling, requesting medical and dental appointments, filing grievances, inmate requests and other communication processes with facility staff.

(ix) Commissary by phone as a backup to the dormitory kiosks.

(x) Technical and accounting support at no cost.

(xi) Twenty Four (24) hour monitoring of on-site equipment to ensure proper operation.

(xii) Inventory of personal care items, beauty products, toiletries, clothing, food, and related products for sale to the inmates.

(xiii) Software necessary to administer the processing of inmate commissary orders as well as printers and other related equipment for the commissary process. Sufficient POS, check writing, and report printers will be provided to support the commissary and trust fund accounting processes.

(xiv) A portal on the Jailatm Website for the Care Pack Services Program. Commission will be paid to the Facility on all sales.

(xv) A portal on the Jailatm website allowing friends and family to send and receive electronic messages from inmates. Kimble's will collect a fee of \$0.50 for each message sent or received.

(xvi) Kimble's will provide debit calling service through Customer's inmate telephone provider at no charge to the Customer. Inmates will be charged a \$.50 transaction fee per transaction.

(xvii) the Customer will be provided the investigative tools contained in the Lockdown software and related features at no charge.

(xviii) Kimble's will insure that any and all fees charged are in compliance with all federal and state laws.

(xiv) Kimble's will maintain a relationship with New World to allow connection between Customer's Jail Management System and its Lockdown software. Kimble's shall be responsible for the any and all costs of said relationship. Kimble's will maintain a relationship with IC Solutions to provide debit calling and commissary by phone services to inmates at no cost to the county.

(c) In order for Kimble's to provide the services specified herein, Customer agrees that:

(i) All workstations for administrative and book in processing use by staff shall meet the following minimum requirements:

WORKSTATION REQUIREMENTS	
Processor	Personal computer (PC) with a minimum 1 gigahertz (GHz) or processor clock speed recommended; Intel Pentium/Celeron family, or AMD K6/Athlon/Duron family, or compatible processor recommended higher
Operating System	Windows XP
Browser	Microsoft Internet Explorer 7.0 or better
Memory	At least 128 (MB) of RAM; 256 MB for optimum speed
Drive	USB
Display	Super VN.C. (1,024 x 768) or higher-resolution video adapter and monitor
Peripherals	Keyboard and Microsoft Mouse or compatible pointing device
INTERNET ACCESS REQUIREMENTS	
DSL or Cable Modem	Data Rate: 1.5 Mbits downstream and 384Kbits upstream, minimum NOTE: You are required and responsible for obtaining and installing anti-virus and firewall protection software for connectivity to and from the Internet.

(ii) Customer shall ensure that there is 110V service at the installation point of each pod kiosk.

(iii) Customer shall ensure that there is a location for the placement of the Kimble's computer server at the Cat5/6 termination point for connectivity to the lobby kiosk.

(iv) Customer shall ensure reasonable access to the facility to Kimble's personnel to service equipment.

(v) Customer shall ensure that there is High Speed internet service for use with the Kimble's Server and sufficient internal static IP addresses for the Kimble's equipment.

(vi) Customer shall be responsible for removal of cash from the lobby and booking kiosks.

(vii) Customer shall provide a lobby location for the lobby kiosks reasonably situated to facilitate public access.

(viii) Customer shall provide a reasonable level of security for the lobby kiosks and all other equipment owned by Kimble's. If any of Kimble's equipment is vandalized or damaged by an inmate, then Customer agrees to cooperate with Kimble's to seek prosecution of the responsible inmate for such damages.

(ix) Customer shall provide a reasonable level of security for the safety of all Kimble's employees carrying out duties at the Facility.

(x) Customer is responsible for regular reconciliation of financial records maintained on the software provided by Kimble's including but not limited to inmate trust accounts. Kimble's recommends that such records be reconciled monthly by an individual trained in accounting and not by any person responsible for daily entry of financial data.

2. **Term.** The "Term" of this Agreement shall commence on October 18, 2017 and will continue for three (3) years thereafter. Notwithstanding anything to the contrary, the terms and conditions of this Agreement shall continue to apply for so long as Kimble's continues to provide services hereunder to Customer after the expiration or termination of this Agreement.

3. **Commissions Paid to Customer.** Kimble's shall pay a commission of 35% to Customer on the gross sales of all products purchased by inmates of the Facility and all products purchased through the Care Pack Services Program less applicable taxes. Additionally Kimble's will pay the Customer a \$.10 (ten cents) commission per .50 cent paid by inmates and friends and family to send email messages through Kimble's portal. Notwithstanding the

foregoing, no commission shall be paid on the sale of U.S. Postal items or kits purchased by the Customer for indigent inmates of the Facility.

4. **Customers Use of Software Licenses.** Kimble's through its business relationship with Tech Friends Inc. grants Customer a non-exclusive, non-transferable license to use (without the right to sublicense) and to access certain proprietary computer software products and materials in connection provision of services hereunder ("Software"). The Software includes any upgrades, modifications, updates, and additions to existing features that are implemented in Kimble's discretion (the "Updates"). Kimble's warrants and represents that the Software is warranted to meet GAAP (General Applied Accounting Principles) standards. Customer authorizes Kimble's to provide or preinstall the third-party software and agrees that Kimble's may agree to the third party End User License Agreements on Customers behalf. Customer's right to use any third-party software product that Kimble's provides shall be limited by the terms of the underlying license that Kimble's obtained for such product. The Software is to be used solely for Customers internal business purposes in connection with the provision of the services contemplated hereby. Customer will not permit a third party to use the Software, assign, sublicense, lease, encumber, or otherwise transfer or attempt to transfer the Software or any portion thereof, process or permit to be processed any data of any other party with the Software, alter, maintain, enhance, disassemble, decompile, reverse engineer or otherwise modify the Software or allow any third party to do so, connect the Software to any products that Kimble's did not furnish or approve, or ship, transfer, or export the Software into any country, or use the Software in any manner prohibited by the export laws of the United States. Kimble's is not liable with regard to any Software that Customer uses in a prohibited manner. To the extent permitted by applicable law, Customer shall indemnify Kimble's, and the agents, servants, and all employees of Kimble's, and shall defend, save and hold them harmless from and against any claim, suit, legal proceeding, judgment, decree, loss, cost, damage or expense (including, but not limited to, reasonable attorney's and other costs and expenses incident to the investigation or the defense of any claim, suit or legal proceeding) arising from or growing out of Customer's unauthorized or prohibited use of the Software caused by the negligent acts or omissions or misconduct of Customer, any subcontractor of Customer or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be responsible or liable, except to the extent caused by the negligent acts or omissions or misconduct of Kimble's, its officers, employees and agents.

5. **Certifications and Indemnity of Kimble's.** Kimble's agrees to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes ("E-Verify") and if Kimble's provides services to the Customer utilizing a subcontractor, Kimble's shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of said General Statutes. Kimble's agrees to verify compliance by affidavit upon request by the Customer. Notwithstanding any other provision herein, Kimble's shall indemnify Customer, and the agents, servants, employees and all elected officials of Customer, and shall defend, save and hold the Indemnities harmless from and against any claim, suit, legal proceeding, judgment, decree, loss, cost, damage or expense (including, but not limited to, reasonable attorney's and other costs and expenses incident to the investigation or the defense of any claim, suit or legal proceeding) arising from or growing out of the injury to or death of any person or the damage to or loss of any property (including, but not limited to, property of Kimble's) caused by the negligent acts or omissions or misconduct of Kimble's, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be responsible or liable, except to the extent caused by the negligence of the Customer, its elected officials, officers, employees and agents.

6. **Relationship of Parties.** Kimble's is an independent contractor of Customer. Kimble's represents that it has or will secure, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Customer. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. It is further agreed that the Kimble's will obey all State and Federal statutes, rules and regulations. Neither Kimble's nor any employee of the Kimble's shall be deemed an officer, employee or agent of the Customer. Kimble's shall ensure that it maintains a properly executed IRS Form W-9 on file with the Customer.

7. **Confidentiality.**

(a) To the extent permitted by law, the Software, Updates and the applications and related data and information (the "Confidential Information") shall at all times remain confidential to Kimble's. Customer will not disclose such Confidential Information to any third party unless required by Public Records Laws, subpoena, court order, or other applicable law. Because Customer will be able to access Confidential Information of third parties that is protected by

certain federal and state privacy laws through the Software and its applications. Customer agrees that it will only access the Software with computer systems that have effective firewall and anti-virus protection.

(b) Kimble's may, during the course of providing services hereunder or in relation to this Agreement have access to, and acquire knowledge regarding personnel, inmates, materials, data, systems, and other information which may not be accessible or known to the general public. Any knowledge acquired by Kimble's from such materials shall not be used, published or divulged by Kimble's to any person, firm or other entity unless required by subpoena, court order, or other applicable law.

8. Insurance.

(a) Kimble's shall obtain, at its sole expense, all insurance as required in the Customers contract control policy and shall not commence work until such insurance is in effect and certification thereof has been received by the Customer's Finance Director. Such insurance shall name the Customer as an Additional Insured under both General Liability and Auto Liability policies. Should said Certificate of Insurance expire prior to the termination of this Agreement, Kimble's shall supply to the Customer an updated certification prior to the expiration of the Certificate initially provided.

Failure of the County to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided shall not be construed as a waiver of Provider's obligation to maintain such insurance.

(b) Customer agrees to provide Kimble's with reasonable and timely written notice of any claim, demand, or cause of action made or brought against Customer arising out of or related to the utilization of the Software or provision of the Commissary Services in which Kimble's is brought in as a co-defendant in the Claim. Kimble's has the right to defend any such claim, demand, or cause of action at Kimble's sole cost and expense.

9. Termination of Agreement. If either party defaults in the performance of any obligation under this Agreement, then the non-defaulting party shall give the defaulting party written notice of its default, setting forth specifically the nature of the default. If the defaulting party fails to cure its default within ninety (90) days after receipt of the notice of default, then the non-defaulting party shall have the right to terminate this Agreement upon thirty (30) days written notice. Notwithstanding the foregoing, in the event this Agreement is terminated by either party, there shall be no disruption of service between the termination of the existing services and the implementation of an alternate commissary service. Kimble's shall continue providing commissary services until a new vendor is selected to provide such services.

10. Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, neither party shall have any liability for indirect, incidental, special or consequential damages, loss of profits or income, loss or corrupted data, or loss of use of other benefits, howsoever caused and even if due to the party's negligence, breach of contract, or other fault, even if such party has been advised of the possibility of such damages.

11. Uncontrollable Circumstance. Each Party reserves the right to renegotiate or terminate this Agreement upon sixty (60) days advance written notice if circumstances outside its control occur, which negatively impact its business, and are related to the operation of the Facility; material reduction in inmate population or capacity; material changes in policy or economic conditions; acts of God; actions taken for security reasons (such as lock-downs). Each Party shall not unreasonably exercise such right. Further, the Parties acknowledge that provision of the Commissary Services are subject to certain federal, state or local regulatory requirements and restrictions which are subject to change from time-to-time and nothing contained herein to the contrary shall restrict the Parties from taking any steps necessary to perform in compliance therewith.

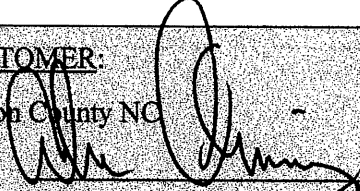
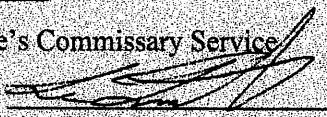
12. Force Majeure. Either party may be excused from performance under this Agreement to the extent that performance is prevented by any act of God, war, civil disturbance, terrorism, strikes, supply or market, failure of a third party's performance, failure, fluctuation or non-availability of electrical power, heat, light, air conditioning or telecommunications equipment, other equipment failure or similar event beyond its reasonable control; provided, however that the affected party shall use reasonable efforts to remove such causes of non-performance.

13. Notices. Any notice or demand made by either party under the terms of this Agreement or under any statute shall be in writing and shall be given by personal delivery; registered or certified U.S. mail, postage prepaid; or commercial courier delivery service, to the address below the party's signature on this document, or to such other address as a party may designate by written notice in compliance with this section.

14. **Access to and Record Retention.** Kimble's agrees to maintain all records of or related to the Commissary Services and shall, upon the Customer's request, provide the Customer with, or access to, said records.

15. **Iran Divestment Act Certification.** Kimble's commissary hereby certifies that Kimble's commissary, and its subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. Kimble's commissary shall not utilize any subcontractor that is identified on the List.

16. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Unless prohibited by law, any action resulting from this Agreement shall be brought solely in the General Court of Justice of North Carolina sitting in Gaston County, North Carolina. No waiver by either party of any event of default under this Agreement shall operate as a waiver of any subsequent default under the terms of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected. Provider shall not sub-contract all or any part of the services provided for in this Agreement without prior written approval of the County. Additionally, Provider shall not assign all or any part of this Agreement, including rights to payments, to any other party without the prior written consent of the County. This Agreement shall be binding upon and inure to the benefit of Kimble's and Customer and their respective successors and permitted assigns. Each signatory to this Agreement warrants and represents that he or she has the unrestricted right and requisite authority to enter into and execute this Agreement, to bind his or her respective party, and to authorize the obligations of the respective parties as set forth herein. Provider and Customer each shall comply, at its own expense, with all applicable laws and regulations in the performance of their respective obligations under this Agreement and otherwise in their operations. Nothing in this Agreement shall be deemed or construed by the parties or any other entity to create an agency, partnership, or joint venture between Customer and Provider. This Agreement cannot be modified orally and can only be modified by a written instrument signed by all parties. The parties' rights and obligations, which by their nature would extend beyond the termination, cancellation, or expiration of this Agreement, shall survive such termination, cancellation, or expiration (including, without limitation, any payment obligations for services or equipment received prior to such termination, cancellation, or expiration). This Agreement may be executed in counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. This Agreement constitutes the entire agreement of the parties regarding the subject matter set forth herein and supersedes any prior oral or written agreements or guarantees regarding subject matter set forth herein. This contract will be administered by the Gaston County Sheriff or his designee.

<u>CUSTOMER:</u> Gaston County NC By:  Name: <u>Alan Cloninger</u> Title: <u>Sheriff</u> Date: <u>11-1-17</u> <u>Gaston County's Notice Address:</u> Gaston County Sheriff's Office 425 Dr. Martin Luther King Jr. Way Gastonia, North Carolina 28052 Phone - (704) 869-6800	<u>KIMBLES:</u> Kimble's Commissary Service By:  Name: <u>LEE FARNSWORTH</u> Title: <u>REGIONAL MGR</u> Date: <u>OCT. 30, 2017</u> <u>Kimble's Notice Address:</u> Kimble's Commissary Services 100 Webster St. LaGrange Georgia, 30241 Phone - 706-884-5527
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